

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

§112 Rejections

In the Office Action dated 01/25/2010, claims 1, 3, 4, 6-9, 11-24, 27-28, and 32-47 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Office stated that the limitation in claim 1 reciting “a reservoir, wherein the reservoir contains active agent” lacked adequate support in the original disclosure. On 03/19/2010, Applicant submitted a response noting that the quoted claim language was copied verbatim from original claim 28, such that it would be improper to find such language to represent new matter.

In the Advisory Action dated 04/19/2010, the Office maintained that the claim language represented new matter because it was unclear what the relationship was between the biomaterial and the reservoir. In particular, the Office stated that it was not clear that the biomaterial produces the active agent, which is stored in the reservoir. The Office then instructed Applicant to use language from the original specification when amending the claims.

Without admitting the propriety of the Office’s positions, Applicant has amended claim 1 to more closely track language from the original specification per the Office’s instructions. In particular, Applicant would like to direct the Office’s attention to paragraphs [0097]-[0098] of the original specification. Applicant would also like to direct the Office’s attention to FIGS. 15-16 as originally filed with the present application. Amended claim 1 is clear, definite, adequately supported under 35 U.S.C. §112, and contains no new matter. To the extent that the Office disagrees and feels that the claim should use different language, the Office is earnestly invited to provide Applicant with the precise language that the Office would deem appropriate.

For at least the foregoing reasons, Applicant respectfully requests that the rejection be withdrawn.

Conclusion

Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 369-4811 or via e-mail at aulmer@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. B. Ulmer', with a long horizontal flourish extending to the right.

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